

Securities and Exchange Commission

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to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in section 17(d) of the Securities Exchange Act of 1934.

(d) Upon the effectiveness of such a plan or part thereof, any self-regulatory organization which is a party to the plan shall be relieved of responsibility as to any person for whom such responsibility is allocated under the plan to another self-regulatory organization to the extent of such allocation.

(e) Nothing herein shall preclude any self-regulatory organization from entering into more than one plan filed hereunder.

(f) After the Commission has declared a plan or part thereof effective pursuant to paragraph (c) of this section or acted pursuant to paragraph (g) of this section, a self-regulatory organization relieved of responsibility may notify customers of, and persons doing business with, such member or participant of the limited nature of its responsibility for such member's or participant's acts, practices, and course of business.

(g) In the event that plans declared effective pursuant to paragraph (c) of this section do not provide for all members or participants or do not allocate all regulatory responsibilities, the Commission may, after due consideration of the factors enumerated in section 17(d)(1) and notice and opportunity for comment, designate one or more of the self-regulatory organizations responsible for specified regulatory responsibilities with respect to such members or participants.

[41 FR 49093, Nov. 8, 1976]

§ 240.17f-1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) *Definitions.* For purposes of this section:

(1) The term *reporting institution* shall include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, par-

ticipant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation;

(2) The term *uncertificated security* shall mean a security not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(3) The term *global certificate securities issue* shall mean a securities issue for which a single master certificate representing the entire issue is registered in the nominee name of a registered clearing agency and for which beneficial owners cannot receive negotiable securities certificates;

(4) The term *customer* shall mean any person with whom the reporting institution has entered into at least one prior securities-related transaction; and

(5) The term *securities-related transaction* shall mean a purchase, sale or pledge of investment securities, or a custodial arrangement for investment securities.

(b) Every reporting institution shall register with the Commission or its designee in accordance with instructions issued by the Commission except:

(1) A member of a national securities exchange who effects securities transactions through the trading facilities of the exchange and has not received or held customer securities within the last six months;

(2) A reporting institution that, within the last six months, limited its securities activities exclusively to uncertificated securities, global securities issues or any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate; or

(3) A reporting institution whose business activities, within the last six months, did not involve the handling of securities certificates.

(c) *Reporting requirements*—(1) *Stolen securities.*

(i) Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the theft or loss of any securities certificates where there is substantial basis for believing that criminal activity

was involved. Such report shall be made within one business day of the discovery and, if the certificate numbers of the securities cannot be ascertained at that time, they shall be reported as soon thereafter as possible.

(ii) Every reporting institution shall promptly report to the Federal Bureau of Investigation upon the discovery of the theft or loss of any securities certificate where there is substantial basis for believing that criminal activity was involved.

(2) *Missing or lost securities.* Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the loss of any securities certificate where criminal actions are not suspected when the securities certificate has been missing or lost for a period of two business days. Such report shall be made within one business day of the end of such period except that:

(i) Securities certificates lost in transit to customers, transfer agents, banks, brokers or dealers shall be reported by the delivering institution by the later of two business days after notice of non-receipt or as soon after such notice as the certificate numbers of the securities can be ascertained.

(ii) Securities certificates considered lost or missing as a result of securities counts or verifications required by rule, regulation or otherwise (*e.g.*, dividend record date verification made as a result of firm policy or internal audit function report) shall be reported by the later of ten business days after completion of such securities count or verification or as soon after such count or verification as the certificate numbers of the securities can be ascertained.

(iii) Securities certificates not received during the completion of delivery, deposit or withdrawal shall be reported in the following manner:

(A) Where delivery of the securities certificates is through a clearing agency, the delivering institution shall supply to the receiving institution the certificate number of the security within two business days from the date of request from the receiving institution. The receiving institution shall report

within one business day of notification of the certificate number;

(B) Where the delivery of securities certificates is in person and where the delivering institution has a receipt, the delivering institution shall supply the receiving institution the certificate numbers of the securities within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(C) Where the delivery of securities certificates is in person and where the delivering institution has no receipt, the delivering institution shall report within two business days of notification of non-receipt by the receiving institution; or

(D) Where delivery of securities certificates is made by mail or via draft, if payment is not received within ten business days, the delivering institution shall confirm with the receiving institution the failure to receive such delivery; if confirmation shows non-receipt, the delivering institution shall report within two business days of such confirmation.

(3) *Counterfeit securities.* Every reporting institution shall report the discovery of any counterfeit securities certificate to the Commission or its designee, to a registered transfer agent for the issue, and to the Federal Bureau of Investigation within one business day of such discovery.

(4) *Transfer agent reporting obligations.* Every transfer agent shall make the reports required above only if it receives notification of the loss, theft or counterfeiting from a non-reporting institution or if it receives notification other than on a Form X-17F-1A or if the certificate was in its possession at the time of the loss.

(5) *Recovery.* Every reporting institution that originally reported a lost, missing or stolen securities certificate pursuant to this Section shall report recovery of that securities certificate to the Commission or its designee and to a registered transfer agent for the issue within one business day of such recovery or finding. Every reporting institution that originally made a report in which criminality was indicated also

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shall notify the Federal Bureau of Investigation that the securities certificate has been recovered.

(6) *Information to be reported.* All reports made pursuant to this Section shall include, if applicable or available, the following information with respect to each securities certificate:

- (i) Issuer;
- (ii) Type of security and series;
- (iii) Date of issue;
- (iv) Maturity date;
- (v) Denomination;
- (vi) Interest rate;
- (vii) Certificate number, including alphabetical prefix or suffix;
- (viii) Name in which registered;
- (ix) Distinguishing characteristics, if counterfeit;
- (x) Date of discovery of loss or recovery;
- (xi) CUSIP number;
- (xii) Financial Industry Numbering System ("FINS") Number; and
- (xiii) Type of loss.

(7) *Forms.* Reporting institutions shall make all reports to the Commission or its designee and to a registered transfer agent for the issue pursuant to this section on Form X-17F-1A. Reporting institutions shall make reports to the Federal Bureau of Investigation pursuant to this Section on Form X-17F-1A, unless the reporting institution is a member of the Federal Reserve System or a bank whose deposits are insured by the Federal Deposit Insurance Corporation, in which case reports may be made on the form required by the institution's appropriate regulatory agency for reports to the Federal Bureau of Investigation.

(d) *Required inquiries.* (1) Every reporting institution (except a reporting institution that, acting in its capacity as transfer agent, paying agent, exchange agent or tender agent for an equity issue, or registrar for a bond or other debt issue, compares all transactions against a shareholder or bondholder list and a current list of stop transfers) shall inquire of the Commission or its designee with respect to every securities certificate which comes into its possession or keeping, whether by pledge, transfer or otherwise, to ascertain whether such securities certificate has been reported as

missing, lost, counterfeit or stolen, unless:

(i) The securities certificate is received directly from the issuer or issuing agent at issuance;

(ii) The securities certificate is received from another reporting institution or from a Federal Reserve Bank or Branch;

(iii) The securities certificate is received from a customer of the reporting institution; and

(A) Is registered in the name of such customer or its nominee; or

(B) Was previously sold to such customer, as verified by the internal records of the reporting institution;

(iv) The securities certificate is received as part of a transaction which has an aggregate face value of \$10,000 or less in the case of bonds, or market value of \$10,000 or less in the case of stocks; or

(v) The securities certificate is received directly from a drop which is affiliated with a reporting institution for the purposes of receiving or delivering certificates on behalf of the reporting institution.

(2) *Form of inquiry.* Inquiries shall be made in such manner as prescribed by the Commission or its designee.

(e) *Permissive reports and inquiries.* Every reporting institution may report to or inquire of the Commission or its designee with respect to any securities certificate not otherwise required by this section to be the subject of a report or inquiry. The Commission on written request or upon its own motion may permit reports to and inquiries of the system by any other person or entity upon such terms and conditions as it deems appropriate and necessary in the public interest and for the protection of investors.

(f) *Exemptions.* The following types of securities are not subject to paragraphs (c) and (d) of this section:

(1) Security issues not assigned CUSIP numbers;

(2) Bond coupons;

(3) Uncertificated securities;

(4) Global securities issues; and

(5) Any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate.

(g) *Recordkeeping.* Every reporting institution shall maintain and preserve in an easily accessible place for three years copies of all Forms X-17F-1A filed pursuant to this section, all agreements between reporting institutions regarding registration or other aspects of this section, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

(Secs. 2, 17, and 23, 15 U.S.C. 78b, 78q, 78w)

[44 FR 31503, May 31, 1979; 45 FR 14022, Mar. 3, 1980, as amended at 53 FR 37289, Sept. 26, 1988; 53 FR 40721, Oct. 18, 1988]

§ 240.17f-2 Fingerprinting of securities industry personnel.

(a) *Exemptions for the fingerprinting requirement.* Except as otherwise provided in paragraph (a)(1) or (2) of this section, every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency shall require that each of its partners, directors, officers and employees be fingerprinted and shall submit, or cause to be submitted, the fingerprints of such persons to the Attorney General of the United States or its designee for identification and appropriate processing.

(1) *Permissive exemptions.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency may claim one or more of the exemptions in paragraph (a)(1) (i), (ii), (iii) or (iv) of this section; *Provided*, That all the requirements of paragraph (e) of this section are also satisfied.

(i) *Member of a national securities exchange, broker, dealer or registered clearing agency.* Every person who is a partner, director, officer or employee of a member of a national securities exchange, broker, dealer, or registered clearing agency shall be exempt if that person:

(A) Is not engaged in the sale of securities;

(B) Does not regularly have access to the keeping, handling or processing of (1) securities, (2) monies, or (3) the original books and records relating to the securities or the monies; and

(C) Does not have direct supervisory responsibility over persons engaged in

the activities referred to in paragraphs (a)(1)(i) (A) and (B) of this section.

(ii) *Registered transfer agents.* Every person who is a partner, director, officer or employee of a registered transfer agent shall be exempt if that person:

(A) Is not engaged in transfer agent functions (as defined in section 3(a)(25) of the Securities Exchange Act of 1934) or activities incidental thereto; or

(B) Meets the conditions in paragraphs (a)(1)(i) (B) and (C) of this section.

(iii) *Registered broker-dealers engaged in sales of certain securities.* Every partner, director, officer and employee of a registered broker or dealer who satisfies paragraph (a)(1)(i)(B) of this section shall be exempt if that broker or dealer:

(A) Is engaged exclusively in the sale of shares of registered open-end management investment companies, variable contracts, or interests in limited partnerships, unit investment trusts or real estate investment trusts; *Provided*, That those securities ordinarily are not evidenced by certificates;

(B) Is current in its continuing obligation under §§ 240.15b1-1 and 15b3-1(b) to update Item 10 of Form BD to disclose the existence of any statutory disqualification set forth in sections 3(a)(39), 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934;

(C) Has insurance or bonding indemnifying it for losses to customers caused by the fraudulent or criminal acts of any of its partners, directors, officers or employees for whom an exemption is being claimed under paragraph (a)(1)(iii) of this section; and

(D) Is subject to the jurisdiction of a state insurance department with respect to its sale of variable contracts.

(iv) *Illegible fingerprint cards.* Every person who is a partner, director, officer or employee shall be exempt if that member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, on at least three occasions:

(A) Attempts in good faith to obtain from such person a complete set of fingerprints acceptable to the Attorney General or its designee for identification and appropriate processing by requiring that person to be fingerprinted, by having that person's fingerprints